

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MAEWEATHERS MARSHALL,
Plaintiff,
v.
J. HAMMAD, et al.,
Defendants.

Case No. [17-cv-03736-SI](#)

ORDER OF DISMISSAL

Re: Dkt. No. 1

Maeweathers Marshall, an inmate at the Correctional Training Facility in Soledad, California, commenced this action by filing a complaint alleging that officials at Alameda County Jail, where he earlier was housed, had violated his constitutional rights to be free from cruel and unusual punishment and to be free from retaliation for complaining. Marshall alleged that deputies at the Alameda County Jail refused to give him his lunch on July 6, 2016, in order to retaliate against him after he asked for a grievance form to use to complain about some other jail condition. Marshall further alleged that, if the deputies thought he was going to “gas” them (i.e., throw urine or feces on them), other correctional staff could have delivered his lunch to him, or other methods could have been used by the deputies to deliver his lunch in a manner to minimize the risk of being gassed by him. He further alleged that his inmate grievance about the incident was not handled properly.


Marshall’s complaint is now before the court for review under 28 U.S.C. § 1915A, which requires the court to identify any cognizable claims, and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief.

1 The complaint in this action repeats claims made in *Marshall v. Alameda County*, Case No.
2 17-cv-3310 SI. Although the complaint in Case No. 17-cv-3310 SI includes additional claims, the
3 claim about the denial of lunch on July 6, 2016 as retaliation and the improperly-handled
4 grievance also are alleged. See Docket No. 1 at 9-11 in Case No. 17-cv-3310 SI. The complaint
5 in this action is frivolous because it asserts claims duplicative of those raised in the earlier action.
6 See *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey v. Johnson*, 846 F.2d
7 1019, 1021 (5th Cir. 1988) (duplicative or repetitious litigation of virtually identical causes of
8 action is subject to dismissal under 28 U.S.C. § 1915 as malicious); see also *Adams v. California*
9 *Dept. of Health Services*, 487 F.3d 684, 689 (9th Cir. 2007) ("Plaintiffs generally have 'no right to
10 maintain two separate actions involving the same subject matter at the same time in the same court
11 and against the same defendant.'")

12 Accordingly, this action is DISMISSED with prejudice because it is frivolous. The clerk
13 shall close the file.

14 **IT IS SO ORDERED.**

15 Dated: January 19, 2018

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18 SUSAN ILLSTON
19 United States District Judge
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